

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BEVERLY GAYETA DE CHAVEZ
3901 Glacier Court
Vallejo, CA 94591

Registered Nurse License No. 694117

Respondent.

CASE No. 2012-164


OAH No. 2011100288

NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2) the attached decision is hereby deemed adopted by operation of law on June 1, 2012.

Pursuant to Government Code section 11519, this Decision shall become effective on June 29, 2012.

Date: June 1, 2012.


Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
SUCCESSOR TO THE BOARD OF REGISTERED NURSING
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BEVERLY GAYETA DE CHAVEZ,

Registered Nurse License No. 6941167

Respondent.

Case No. 2012-164

OAH No. 2011100288

PROPOSED DECISION

This decision is the result of a stipulated settlement that was placed on the record before Cheryl R. Tompkin, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 3, 2012, in Oakland, California.

Char Sachson, Deputy Attorney General, appeared on behalf of the Department of Consumer Affairs, successor to the Board of Registered Nursing (complainant). Deputy Attorney General Judith Loach, respondent Beverly Gayeta De Chavez and respondent's counsel, Teresa Witherspoon, Attorney at Law.

The matter was submitted for decision on February 3, 2012.

FACTUAL FINDINGS

1. On September 19, 2011, the Executive Officer of the Board of Registered Nursing issued an Accusation against respondent.
2. On December 14, 2011, complainant and respondent entered into a Stipulated Settlement and Disciplinary Order for Public Reproval (Stipulated Settlement), a copy of which is attached hereto as Attachment A and made a part hereof.
3. At the hearing, complainant, through counsel, represented that the parties wish to settle all the charges and allegations set forth in the Accusation in accordance with the terms and conditions of the Stipulated Settlement. Respondent, through her signature on the Stipulated Settlement, has represented that she: (a) has read and understands the terms and conditions of the Stipulated Settlement; (b) has knowingly and voluntarily entered into the

Stipulated Settlement; and (c) is knowingly and voluntarily waiving her right to a hearing in this matter.

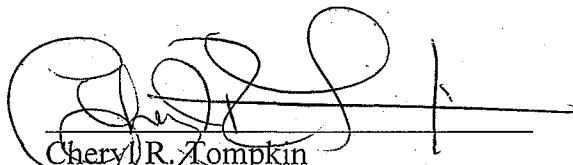
LEGAL CONCLUSIONS

Pursuant to the representations of the parties, good cause exists to adopt the Stipulated Settlement as the decision and order in this matter.

ORDER

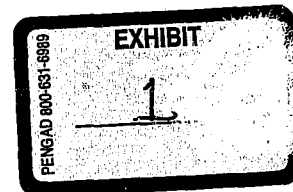
The Stipulated Settlement and Disciplinary Order for Public Reprimand executed by the parties and attached hereto as Attachment A is the decision and order in this matter.

DATED: February 15, 2012



Cheryl R. Tompkin
Administrative Law Judge
Office of Administrative Hearings

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1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH
Deputy Attorney General
4 State Bar No. 162030
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5 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
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E-mail: Judith.Loach@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **THE SUCCESSOR TO THE BOARD OF REGISTERED NURSING**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2012-164

12 **BEVERLY GAYETA DE CHAVEZ**
13 **3901 Glacier Court**
Vallejo, CA 94591
14 **Registered Nurse License No. 694117**

OAH No. 2011100288

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER FOR PUBLIC
REPROVAL**

15 Respondent.

[Bus. & Prof. Code § 495]

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

- 20 1. LOUISE R. BAILEY, M.ED., RN ("Complainant") is the Executive Officer of the
21 Board of Registered Nursing. This action is maintained pursuant to a Delegation of Authority
22 from the Board and its Executive Officer to the Department of Consumer Affairs, effective
23 December 31, 2011. The Board or its successor is represented in this matter by Kamala D.
24 Harris, Attorney General of the State of California, by Judith J. Loach, Deputy Attorney General.
25 2. Respondent Beverly Gayeta De Chavez ("Respondent") is represented in this
26 proceeding by attorney Teresa Witherspoon, whose address is: 1433 Webster Street, Suite 200,
27 Oakland, CA 94612.
28

3. On or about December 15, 2006, the Board of Registered Nursing issued Registered Nurse License No. 694117 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2012-164 and will expire on February 29, 2012, unless renewed.

JURISDICTION

4. Accusation No. 2012-164 was filed before the Department of Consumer Affairs ("Board") for the Successor to the Board of Registered Nursing, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 19, 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2012-164 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Pursuant to Business and Professions Code section 102.3, the Board delegated its duties to the Department of Consumer Affairs by way of an interagency agreement, effective December 31, 2011, until legislation re-establishing the Board takes effect. A copy of the interagency agreement is attached hereto as Exhibit B and is incorporated by reference.

6. Respondent acknowledges and agrees that the Board or its successor has continuing jurisdiction to discipline her license.

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2012-164. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order for Public Reproval.

8. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 10. Respondent admits the truth of the First and Third Cause for Discipline as set forth in
7 Accusation No. 2012-164. As to the Second Cause for Discipline, Respondent admits that there
8 was a five minute period (versus 45 minutes as alleged) during which time she falsely represented
9 in the Observation Log that there had been continuous observation of Patient A.

10 11. Respondent agrees that her Registered Nurse License is subject to discipline and she
11 agrees to be bound by the Department of Consumer Affairs ("Board's") probationary terms as set
12 forth in the Disciplinary Order below.

13 CIRCUMSTANCES IN MITIGATION

14 12. Respondent Beverly Gayeta De Chavez has never been the subject of any disciplinary
15 action and is admitting responsibility early in the proceedings. She has presented numerous letters
16 of recommendation from fellow nurses at Napa State Hospital, who uniformly attest to her
17 excellence in nursing practice and commitment to the delivery of quality and compassionate care.
18 Additionally, her most recent performance evaluation demonstrates that she met and/or exceeded
19 performance expectations for employment at Napa State Hospital.

20 CONTINGENCY

21 13. This stipulation shall be subject to approval by the Board or its successor pursuant to
22 the Board's delegation of authority as set forth in the attached interagency agreement. Applicant
23 understands and agrees that counsel for Complainant and Board staff may communicate directly
24 with the Board or its successor regarding this stipulation and settlement, without notice to or
25 participation by Applicant or her counsel.

26 By signing the stipulation, Applicant understands and agrees that she may not withdraw her
27 agreement or seek to rescind the stipulation before the Board or its successor act on it or it
28 becomes effective by operation of law pursuant to the Administrative Procedure Act (Gov. Code,

1 § 11340 et seq.). If the Stipulated Settlement and Disciplinary Order is rejected by the Board or
2 its successor as the final resolution of the pending accusation, it shall be of no force or effect,
3 except for this paragraph it shall be inadmissible in any legal action between the parties, and the
4 Board or its successor shall not be disqualified from further action by having considered this
5 matter.

6 14. The parties understand and agree that facsimile copies of this Stipulated Settlement
7 and Disciplinary Order for Public Reapproval, including facsimile signatures thereto, shall have the
8 same force and effect as the originals.

9 15. This Stipulated Settlement and Disciplinary Order for Public Reapproval is intended by
10 the parties to be an integrated writing representing the complete, final, and exclusive embodiment
11 of their agreement. It supersedes any and all prior or contemporaneous agreements,
12 understandings, discussions, negotiations, and commitments (written or oral). This Stipulated
13 Settlement and Disciplinary Order for Public Reapproval may not be altered, amended, modified,
14 supplemented, or otherwise changed except by a writing executed by an authorized representative
15 of each of the parties.

16 16. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Board may, without further notice or formal proceeding, issue and enter the following
18 Disciplinary Order:

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that Registered Nurse License No. 694117 issued to
21 Respondent Beverly Gayeta De Chavez shall, by way of letter from the Board's Executive
22 Officer, be publicly reapproved. The letter shall be in the same form as the letter attached as Exhibit
23 C to this stipulation.

24 IT IS FURTHER ORDERED that within 90 days from the effective date of this decision,
25 Respondent shall pay \$1,175.00 to the Board for its costs associated with the investigation and
26 enforcement of this matter. Respondent shall be permitted to pay these costs in a payment plan
27 approved by the Board. If Respondent fails to pay the Board costs as ordered, Respondent shall
28 not be allowed to renew her Registered Nurse License until Respondent pays costs in full.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Repeval and have fully discussed it with my attorney, Teresa Witherspoon, Esq. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order for Public Repeval voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Department of Consumer Affairs, the Successor to the Board of Registered Nursing.

DATED:

1/20/2012Beverly G. de ChavezBEVERLY GAYETA DE CHAVEZ
Respondent

I have read and fully discussed with Respondent Beverly Gayeta De Chavez the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Repeval. I approve its form and content.

DATED:

1/24/12Teresa Witherspoon, Esq.
Attorney for Respondent

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DATED: January 13, 2012

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General

JUDITH J. LOACH
Deputy Attorney General
Attorneys for Complainant

6

Exhibit A

Accusation No. 2012-164

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH
Deputy Attorney General
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E-mail: Judith.Loach@doj.ca.gov
7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2012-164

13 **BEVERLY GAYETA DE CHAVEZ**
14 **3901 Glacier Court**
Vallejo, CA 94591
15 **Registered Nurse License No. 694117**

ACCUSATION

Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 15, 2006, the Board of Registered Nursing issued Registered
23 Nurse License Number 694117 to Beverly Gayeta De Chavez ("Respondent"). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on February 29, 2012, unless renewed.

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1 a co-worker under her supervision violated NSH Administrative Directive No. 766. The
2 circumstances are as follows:

3 a. On November 6, 2008, Respondent was employed as a registered nurse on Unit
4 A-7 at NSH, assigned to the evening shift which commenced at 2:30 p.m., and ended at 11:15
5 p.m. While on duty, Respondent was responsible for supervising other licensed staff (Psychiatric
6 Technicians and Licensed Vocational Nurses) in their provision of patient care.

7 b. A co-worker under Respondent's supervision was assigned on the evening of
8 November 6, 2008, to provide Close/In-Sight Observation ("CIO") on Patient A. This was to
9 prevent Patient A.'s sexual victimization of other patients on Unit A-7, with the observation to be
10 pursuant to NSH Administrative Directive No. 766.¹

11 c. At approximately 10:15 p.m., Respondent observed that the co-worker assigned
12 to monitor Patient A. was not in a position to directly observe this patient's activities as required
13 by NSH Administrative Directive No. 766. Respondent took no action to direct that the co-
14 worker move to a position to keep Patient A. on CIO status.

15 d. Shortly after 10:15 p.m., Respondent learned that the co-worker assigned to
16 monitor Patient A. had left his post. Respondent did not report this abandonment/neglect of duty
17 on the part of the supervised co-worker and did not assign other staff to monitor Patient A.

18 SECOND CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct – Falsification of NSH Records)

20 9. Respondent is subject to disciplinary action under Code section 2761(a) for
21 unprofessional conduct, in that she falsified NSH records while on duty as a registered nurse.
22 The circumstances are as follows:

23 a. On November 6, 2008, Respondent was employed as a registered nurse on Unit
24 A-7 at NSH, assigned to the evening shift which commenced at 2:30 p.m., and ended at

25 ¹ NSH Administrative Directive No. 766 is entitled "Enhanced Observation of
26 Individuals." It provides that enhanced attention will be provided for individuals (patients) who
27 are at risk. Constant/In-Sight Observation ("CIO") requires that a patient is always in the direct
28 line of sight of an assigned staff person who will be able to notice and intervene in the event that
a dangerous incident occurs. The staff member is required to note the patient's activities every 15
minutes on a document entitled "Observation Record."

1 11:15 p.m. While on duty, Respondent was responsible for supervising other licensed staff
2 (Psychiatric Technicians and Licensed Vocational Nurses) in their provision of patient care.

3 b. A co-worker under Respondent's supervision was assigned on the evening of
4 November 6, 2008, to provide CIO on Patient A. Pursuant to NSH Administrative Directive
5 No. 766, Patient A.'s activities were to be recorded every 15 minutes on a document entitled
6 "Observation Log."

7 c. After 10:15 p.m., Respondent was aware that the co-worker assigned to monitor
8 Patient A. had left his post. Respondent falsely recorded on the Observation Log that from 10:15
9 p.m., through 11:00 p.m., she directly observed Patient A.'s activities. This falsified document
10 was in violation of NSH Administrative Directive No. 378.²

11 THIRD CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct – Failure to Comply with NSH Directive No. 437

13 Regarding Patient Neglect)

14 10. Respondent is subject to disciplinary action under Code section 2761(a) for
15 unprofessional conduct, in that while on duty as a registered nurse at NSH she failed to report the
16 abandonment of Patient A. The circumstances are as follows:

17 a. On November 6, 2008, Respondent was employed as a registered nurse on Unit
18 A-7 at NSH, assigned to the evening shift which commenced at 2:30 p.m. and ended at 11:15

19 p.m. While on duty, Respondent was responsible for supervising other licensed staff
20 (Psychiatric Technicians and Licensed Vocational Nurses) in their provision of care to patients.

21 b. A co-worker under Respondent's supervision was assigned on the evening of
22 November 6, 2008, to provide CIO on Patient A. After 10:15 p.m., Respondent was aware that
23 this co-worker had left his post and that from this time until 11:00 p.m., Patient A.'s activities
24 were unobserved.

25
26 ² Napa State Hospital Directive No. 378 is entitled "Employee Ethics and Conduct."
27 This policy provides that all employees are to conduct themselves in all dealings in an honest and
28 forthright manner and that dishonesty, including any false report or falsification of official
documents is prohibited.

1 c. Respondent failed to report that Patient A. had not been kept under CIO status
2 as required by NSH Administrative Directive No. 437.³

3 PRAYER


4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 694117, issued to Beverly
7 Gayeta De Chavez.

8 2. Ordering Beverly Gayeta De Chavez to pay the Board of Registered Nursing the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 125.3.

11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: September 19, 2011

13 *for* 
14 LOUISE R. BAILEY, M.ED., RN
15 Executive Officer
16 Board of Registered Nursing
17 Department of Consumer Affairs
18 State of California
Complainant

17 SF2011202552
18 20524741.docx

26 ³ Napa State Hospital Administrative Direction No. 437 is entitled "Abuse/Neglect and
27 Reporting Requirements." Said policy incorporates all types of neglect/abuse and or
28 abandonment of patients and includes the failure to keep a designated patient under CIO status
and requires all employees to report any such incidents.

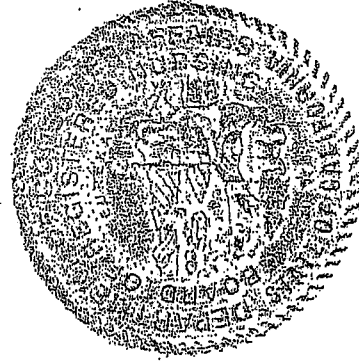
Exhibit B

**Interagency Agreement Between The Department of Consumer Affairs and the
California Board of Registered Nursing**

STATE OF CALIFORNIA)

COUNTY OF SACRAMENTO)

SS:



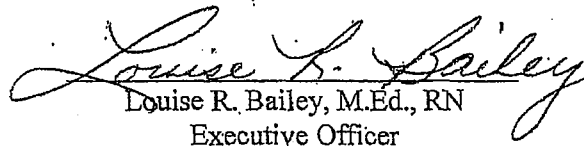
DECLARATION

I am a United States citizen and I am over the age of eighteen. I HEREBY CERTIFY that I, Louise R. Bailey, am the Executive Officer for the California State Board of Registered Nursing ("Board"), Department of Consumer Affairs, 1747 N. Market Blvd., Suite 150, Sacramento, CA, and am the official delegated Custodian of the Records for the Board of Registered Nursing. I am responsible for their maintenance pursuant to Chapter 6, Division 2 of the California Business & Professions Code and certify the contents of said records pursuant to Sections 162 and 163 of the Business and Professions Code.

I hereby state that:

Attached is a true certified copy of the Interagency Agreement between the Board of Registered Nursing and the Department of Consumer Affairs.

I declare under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge and belief. Given under my hand and the seal of the Board of Registered Nursing, Department of Consumer Affairs, at Sacramento, California, this 28th day of December 2011.


Louise R. Bailey, M.Ed., RN
Executive Officer

INTERAGENCY AGREEMENT

Between the Department of Consumer Affairs
&
California Board of Registered Nursing

WHEREAS, Business and Professions Code Sections 2701 and 2708, establishing the Board of Registered Nursing ("Board") and providing for an Executive Officer to perform the duties delegated by the Board will become ineffective and repealed effective January 1, 2012; and

WHEREAS, the Nursing Practice Act has not been repealed and will remain in full force and effect; and

WHEREAS, the Board is within the Department of Consumer Affairs ("Department"); and

WHEREAS, it is the mission of the Board and Department to provide as much consumer protection as possible; and

WHEREAS, the Board has, by vote at its meeting on November 16, 2011, delegated to the Department as of December 31, 2011, those duties, powers and responsibilities that the Board has previously delegated to the Board's Executive Officer as of December 31, 2011, and, further, approved entering into this agreement; and

WHEREAS, the Board and the Department wish to provide for the continued administration of those provisions of the Nursing Practice Act that have been delegated to the Board's Executive Officer in an uninterrupted and stable manner until legislation re-establishing the Board takes effect;

NOW THEREFORE, the parties to this Interagency Agreement (hereinafter "Agreement") agree as follows:

1. The Department accepts the delegation as approved by the Board and confirmed in this Agreement, and agrees to perform all such responsibilities in the best interests of protecting the public and consistently with the Nursing Practice Act.
2. The Board hereby authorizes and empowers the Department to the extent authorized by law, and subject to the review and approval of the State and Consumer Services Agency, to exercise those powers, duties and responsibilities that have been delegated to the Board's Executive Officer as of December 31, 2011, to administer the Nursing Practice Act.
3. The Board hereby authorizes the Department to utilize any previously appropriated funds of the Board to carry out the responsibilities in administering the Nursing Practice Act in conjunction with this Agreement; and those funds shall be used for the

purposes for which the Board of Registered Nursing Fund, Professions and Vocations Fund was established.

4. The Department shall adhere to all current Board policies while this Agreement is in effect; all regulations and policies that have been adopted by the Board as of December 31, 2011, shall remain in effect until the time that legislation re-establishing the Board takes effect.

5. This Agreement shall take effect on December 31, 2011, and remain in effect until the time that legislation re-establishing the Board takes effect.

6. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

IT IS SO AGREED:

Department of Consumer Affairs ("Department")

By Brian Stiger
Brian Stiger, Acting Director

12/14/11
Date

California Board of Registered Nursing

By Jeannine Graves
Jeannine Graves, President
Doug Hoffman, Vice President

12/14/11
Date

Approved:

By Anna M. Caballero
Anna M. Caballero, Secretary
State and Consumer Services Agency

12/14/11
Date

Exhibit C

Letter of Public Reproval Accusation No. 2012-164



June 1, 2012

Beverly Gayeta De Chavez
3901 Glacier Court
Vallejo, CA 94591

RE: LETTER OF PUBLIC REPROVAL
In the Matter of the Accusation Against:
Beverly Gayeta De Chavez, Registered Nurse License No. 694117

Dear Ms. De Chavez:

On September 19, 2011, the Board of Registered Nursing filed an Accusation against your Registered Nurse License. The Accusation alleged that you engaged in unprofessional conduct under 2761(a). The facts in support of the Accusation related to your failure to ensure that a patient at Napa State Hospital was kept under continuous observation as required by the institutional policies and procedures.

Taking into consideration that the incident that gave rise to discipline occurred in 2008, that you have never been before the Board on disciplinary matter and that mitigating circumstances support the determination that you are safe to practice Registered Nursing, the Department of Consumer Affairs, as the Successor to the Board of Registered Nursing has decided that the charges warrant a public reproof.

Accordingly, in resolution of this matter under the authority provided under Business and Professions Code section 495, the Department of Consumer Affairs, the Successor to the Board of Registered Nursing issues this letter of public reproof.

Sincerely,

Louise R. Bailey M.Ed., RN
LOUISE R. BAILEY, M.ED., R.N.
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Cc. Cheryl R. Tompkin, Administrative Law Judge
Char Sachson, Deputy Attorney General
Judith Loach, Deputy Attorney General
Teresa Witherspoon, Esq.